

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
<b>JONES COLLEGE</b>	)	EB-03-IH-0160
	)	Facility #31936
Licensee of Noncommercial Educational Station	)	
WKTZ-FM, Jacksonville, Florida	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: November 26, 2003**

**Released: December 1, 2003**

By the Deputy Chief, Investigations and Hearings Division, Enforcement Bureau:

**I. Introduction**

1. In this *Order*, we admonish Jones College ("Jones"), licensee of noncommercial educational station WKTZ-FM, Jacksonville, Florida, for broadcasting advertisements in violation of Section 399B of the Communications Act of 1934, as amended ("the Act"),<sup>1</sup> and Section 73.503 of the Commission's rules.<sup>2</sup> Based on our review of the facts and circumstances of this case, we conclude that the licensee has violated the pertinent statutory and Commission underwriting rule provisions. Although we believe that no monetary sanction is warranted at this time based on the licensee's prior unblemished record and other factors, we find that an admonishment is necessary to redress the statutory and rule violations.

**II. Background**

2. Advertisements are defined by the Act as program material broadcast "in exchange for any remuneration" and intended to "promote any service, facility, or product" of for-profit entities.<sup>3</sup> Noncommercial educational stations may not broadcast advertisements. Although contributors of funds to noncommercial stations may receive on-air acknowledgements, the Commission has held that such acknowledgements may be made for identification purposes only, and should not promote the contributors' products, services, or business.

3. Specifically, such announcements may not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent or lease.<sup>4</sup> At the same time, however, the Commission has acknowledged that it is at times difficult to distinguish

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<sup>1</sup> 47 U.S.C. § 399b.

<sup>2</sup> 47 C.F.R. § 73.503.

<sup>3</sup> 47 U.S.C. §399b(a).

<sup>4</sup> See *In the Matter of Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations* (1986), *Public Notice*, republished, 7 FCC Rcd 827 (1992) ("Public Notice").

between language that promotes versus that which merely identifies the underwriter. Consequently, it expects only that licensees exercise reasonable, good-faith judgment in this area.<sup>5</sup>

### III. Discussion

4. *The Underwriting Announcements.* We received recorded evidence of numerous announcements, allegedly broadcast by WKTZ-FM on March 1, 2003, that appeared to promote the products or services of presumably for-profit entities.<sup>6</sup> By inquiry letter dated September 25, 2003, we asked Jones to comment on announcements made on behalf of underwriters that included Chuck Nolan Cadillac, Annabelle's Home Furnishings gallery, Donovan Heat & Air, Count Basie Orchestra, and Windsor Park Golf Club.<sup>7</sup> These announcements are alleged to contravene the statute, as implemented and interpreted by applicable Commission rules, precedent and policy.<sup>8</sup>

5. In its October 15, 2003, response, Jones admits that the announcements were aired by WKTZ-FM, but contends that it "cannot confirm or deny" that the transcripts reflect the announcements "exactly as broadcast."<sup>9</sup> Jones maintains that the announcements were contained in a weekly two-hour program called "Swingtime" provided to the station by programmer Norm Vincent, who prepares the show for air.<sup>10</sup> Jones contends that it pays nothing to Mr. Vincent for the program, and that it receives nothing from him or the underwriters mentioned in the announcements.<sup>11</sup> Jones argues that because the underwriters are sponsors of the "Swingtime" show, but not station WKTZ-FM, and because no consideration was exchanged between the underwriters and the station for the broadcast of the announcements, they could not be deemed to be "advertisements" prohibited by section 399B of the Act.<sup>12</sup> Jones further represents, however, that, upon consultation with counsel, Mr. Vincent has "truncate[d]" the underwriting announcements in order to ensure future underwriting rule compliance,<sup>13</sup> and that the station has instituted internal procedures to ensure more "consistent," rather than "periodic" review of its broadcast underwriting announcements.<sup>14</sup>

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<sup>5</sup> See *Xavier University*, 5 FCC Rcd 4920 (1990).

<sup>6</sup> See *Letter of James C. McKinney to Ralph Barlow, District Director, Enforcement Bureau*, dated March 1, 2003 ("Complaint Letter").

<sup>7</sup> See *Letter of the Chief, Investigations and Hearings Division, Enforcement Bureau, to Jones College*, dated September 25, 2003 ("LOI").

<sup>8</sup> See *Complaint Letter*.

<sup>9</sup> See *Letter of Jones College, to the Chief, Investigations and Hearings Division, Enforcement Bureau*, dated October 15, 2003, at 2 ("Response").

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 3. Jones did not indicate specifically how the text of the announcements was to be modified.

<sup>14</sup> *Id.*

6. We find that all of the subject underwriting announcements exceed the bounds of what is permissible under section 399B of the Act, and the Commission's pertinent rules and policies, in light of the "good-faith" discretion afforded licensees under *Xavier, supra*, for the reason that they encourage or invite business patronage, make references to discounted or low-cost services or products, or otherwise depict the underwriters in a comparative and qualitative manner.<sup>15</sup> Although underwriting announcements may identify underwriters and their products or services, they may not promote them.<sup>16</sup> We reject Jones's argument that because the station received no payment for the broadcast of the announcements, they could not be deemed to be "advertisements," as a matter of law, under section 399B of the Act. Remuneration of consideration has been construed to include various forms.<sup>17</sup> In this case, Jones indicates that the station did not pay Mr. Vincent for the right to broadcast the "Swingtime" program.<sup>18</sup> The "consideration" received by the station for broadcasting the announcements thus appears to have been the producer's agreement to allow the station to air the "Swingtime" program free of charge.<sup>19</sup> Consequently, we reject any suggestion that Jones' broadcast of the announcements was permissible under section 399B of the Act.

7. Finally, Jones's reliance on its programmer to supply the station with program material that complies with Commission underwriting policy does not excuse it from liability for any sanction we impose. Licensees are responsible for learning and complying with the statutes and rules administered by the Commission,<sup>20</sup> and for monitoring the content of their program material, from whatever source obtained, prior to airing it.<sup>21</sup> However, in determining the appropriate sanction, we will take cognizance of the fact that Jones itself did not produce the program in question.<sup>22</sup>

8. *Sanction.* In view of the foregoing, we conclude that a sanction is appropriate. However, because of the prior unblemished record of the licensee, and the fact that the station itself did not produce the complained of program material, we do not believe that a monetary sanction is necessary to redress the instant rule violations. We instead conclude that an admonishment is sufficient at this time.<sup>23</sup> We further urge the licensee to implement procedures and practices at its station to ensure that its broadcast underwriting announcements comply with the pertinent statute, Commission rules, and precedent pertaining thereto.

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<sup>15</sup> *LOI*, exhibits A- E; Attachment.

<sup>16</sup> See *Public Notice, supra*; *Kosciusko Educational Broadcasting Foundation (WJTA(FM))*, 5 FCC Rcd 7106 (MMB 1990).

<sup>17</sup> See, e.g., *Fuqua Communications, Inc.*, 30 FCC 2d 94, 97 (1971).

<sup>18</sup> *Response* at 2.

<sup>19</sup> See *In re Window to the World Communications, Inc. (WTTW(TV))*, DA 97-2535 (MMB December 3, 1997), *forfeiture reduced*, 15 FCC Rcd 10025 (EB 2000) ("*WTTW*"); *Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, 90 FCC 2d 895, 911 (1982), *recon.*, 97 FCC 2d 255 (1984).

<sup>20</sup> See, e.g. *In the Matter of Rego, Inc.*, 16 FCC Rcd 16795, 16797 (EB 2001), *citing Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970).

<sup>21</sup> See *WTTW, supra*.

<sup>22</sup> *Id.*

<sup>23</sup> See Note to 47 C.F.R. § 1.80(b)(4).

**IV. Ordering Clauses**

9. Accordingly, IT IS ORDERED that Jones College, licensee of noncommercial educational station WKTZ-FM, Jacksonville, Florida, IS ADMONISHED for broadcasting advertisements in violation of section 399B of the Act, 47 U.S.C. § 399b, and Section 73.503 of the Commission's rules, 47 C.F.R. § 73.503.

10. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to Jones College, 5353 Arlington Expressway, Jacksonville, Florida 32211, and to its counsel, Christopher D. Imlay, Esq., Booth, Freret, Imlay & Tepper, P.C., 14356 Cape May Road, Silver Spring, Maryland 20904-6011.

FEDERAL COMMUNICATIONS COMMISSION

William D. Freedman  
Deputy Chief  
Investigations and Hearings Division  
Enforcement Bureau

Attachment

ATTACHMENT

The following text was transcribed from audio-taped recordings of underwriting announcements broadcast on WKTZ-FM, Jacksonville, Florida, on March 1, 2003:

1. Chuck Nolan Cadillac

Well, as I've mentioned, we're here because of some very nice people at Chuck Nolan Cadillac. Ninety-eight plus years in the business. They're going stronger than ever, my friends. Chuck Nolan Cadillac – over ninety-eight years of satisfying customers with friendly service and honest value.

Just think, since 1905, the Chuck Nolan people have been selling and servicing America's proudest name in automobiles. It's called the standard by which most all others are compared for sure. There are many reasons customers keep coming back year after year to this ten-time "Master Dealer." Why not find out for yourself.

You'll find the goal here is to serve you, and that commitment really shows. Customers consistently rank Chuck Nolan Cadillac among the best in the country in sales and service. So, whether you decide to lease or buy, Chuck Nolan's full-service finance and insurance office offers a broad range of financing offers.

You want to know where they are? I'll tell you. They're out there on Southside Boulevard so conveniently located across from Tinseltown; 2/3 miles north of the Butler.

Chuck Nolan Cadillac: They've been doing things right since 1905.

2. Annabelle's Home Furnishings Gallery

You know, there's nothing quite like a visit to Annabelle's Home Furnishings Gallery in Orange Park. Especially this time of year with Spring just around the corner and one-hundred-fifty cartons of new merchandise from Annabelle's recent trip to market have been unloaded and await your inspection!

And that includes all the "Lamp-Bergere" styles and fragrances. "Lamp-Bergere," the super-popular oil-burning lamp that emits wonderful fragrances while cleaning and purifying the air. Oh, leave it to Annabelle to become the only dealer in Orange Park for this hot item. Now there are classic styles, as well as the signature collections, museum pieces and fragrances. Oh, so many, including floral, fruit, jasmine, exotic, winter wood, and so many others. Now at Annabelle's, lots of new colors to brighten your spirits, and neat things like crystal baubles that you can hang on a lampshade. Or just place. We call them "jewelry for the home." Oh, and so much more. So allow plenty of browse time, my friends. You'll love it.

Annabelle's Home Furnishings Gallery on College Drive immediately off Blanding Boulevard in Orange Park. A special place always with something special for you.

### 3. Donovan Heat & Air

I want to tell you about Donovan Heat & Air--one of the companies that helps make "Swing Time" possible. It is Donovan Heat & Air.

Many of you are Donovan Heat & Air customers, and I know you're as satisfied as I am. Donovan Heat & Air is a company large enough to provide customers with competitive fair pricing for major work, and certainly small enough to provide the kind of personal and dedicated service family-owned and operated companies are so well suited for.

Now, hopefully you won't need Donovan Heat & Air's services often, other than those all-important preventive maintenance check-ups, but when you do you're going to get quick, honest and competent work with no overtime charges until after 8 p.m., including Saturday. Free major work estimates and a ninety-day no-payment/no interest finance plan available to you. That's Donovan Heat & Air.

Here's the telephone number: 223-4200. 223-4200. Donovan Heat & Air. A company for all seasons.

### 4. Count Basie Orchestra

Here's some good news for all of you Count Basie fans. The Count Basie Orchestra will be here to perform in concert at the Jacksonville University Terry concert Hall, Wednesday, March 12<sup>th</sup> at 7:30 p.m.

Yes, the All-American big band with several of the original Count's men. They're coming to town, so mark your calendars now and call Pat Young at 256-7371 for tickets. That's Pat Young at 256-7371.

The Basie Orchestra is under the direction of noted trombonist and leader Grover Mitchell. They're considered the best big band on tour, and I know will provide an exciting and memorable evening for all of us. So before you forget, make a note to call Pat Young for tickets. 256-7371. 256-7371. March 12<sup>th</sup> at JU's Terry Concert Hall.

Count Basie Orchestra: timeless, priceless, and still the genuine article. This is one that you don't want to miss.

### 5. Windsor Park Golf Club

Here's some good news for all you senior golfers, who are looking for your game out on the right course. And the course I'm speaking about of course, is the Windsor Park Golf Club. The Windsor Park Golf Club has a senior bonus program which allows you to play at a special reduced rate, including a cart, on any Tuesday right up until May 12<sup>th</sup>.

Now this is an opportunity for you to play and enjoy this beautiful, challenging, and Jacksonville's only nationally rated golf course, for a special senior's rate. Any Tuesday until May 12<sup>th</sup>. So all you have to do is call 223-GOLF. That's 223-GOLF for details on this senior's golf program, and arrange your tee time for some world-class golf. User-friendly and conveniently located. Windsor Park Golf Club on Hodges Boulevard between Beach and the Butler.